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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2000

IN RE: EARLENE POLYAK

On Petition for Writ of Mandamus
To The United States Court of Appeals
And The United States District Court
For The Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

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50 pp

QUESTIONS PRESENTED

1. SHOULD THE SUPREME COURT ISSUE WRIT OF MANDAMUS TO REVIEW THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT'S DENIAL OF APPEAL OF UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA'S ABSTAINING FROM THE FEDERAL JURISDICTION OF CONSTITUTIONAL RIGHTS AND PRIVILEGES IN DISMISSAL OF CASE FOR LACK OF PERSONAL JURISDICTION FILED UNDER 28 U.S.C 1932?

2.CAN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA'S REFERRAL OF CASE TO MAGISTRATE JUDGE AFTER NOTICE OF NON-CONSENT PURSUANT TO 28 U.S.C. 636(c) BE CONSIDERED ENTIRELY VOLUNTARY?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2000

IN RE: EARLENE POLYAK

PETITION FOR WRIT OF MANDAMUS

Petitioner prays that this Honorable Court issue Writ of Mandamus pursuant to 28 U.S.C. 1651(a) to review the extraordinary circumstances in deprivation of rights and priveleges secured by the Constitution, denied access to the Constitutional Right of a Jury Trial under the color of state law, in which the United States Court of Appeals Eleventh Circuit denied First Amendment right of redress, to the United States District Court dismissal of Complaint and Jury Trial Demand, Non-consent to Magistrate jurisdiction 28 U. S.C. 636(c).

The exceptional circumstances in the denial of access to Federal Courts warrants the exercise of this Courts discretion, and adequate relief cannot be obtained in any other Court in any other form for the protection of 42 U.S.C. 1983

OPINIONS BELOW

The opinions of the United States Court of Appeals Eleventh Circuit are set forth in Appendix A, and the opinons of the United States District Court,Southern District of Florida are set forth in Appendix B. And any pertinent opinions are set forth in Appendix C.

JURISDICTION

The jurisdiction of this Supreme Court is invoked in this original action filed under Article III, in the United States District Court under 28 U.S.C. 1651(a).

This jurisdiction is invoked in diversity of citizenship Sec. 2, where the parties reside in different states"the suit may be be brought in the state where the plaintiff resides under 28 U.S.C. 1932.

The jurisidction of this Supreme Court is further invoked in that petition for rehearing Court of Appeals Eleventh Circuit No. 99-14349 (D.C. No. 98-08391) was denied on April 24, 2001,and within ninety(90) days

The jurisdiction of the federal courts is exclusive over matters governed by the U.S. Constitution and Acts of Congress.

This jurisdiction is further invoked in 28 U.S.C. 1441; 1443(1)(2);2101, and 42 U.S.C 1981, 1982, 1983; Civil Rights Act of 1964, 1991, First Fifth;Seventh and Fourteenth Amendments, and 2403 may apply.

CONSTITUTIONAL PROVISIONS

The pertinent portions of the First Anendment is as follows:

> Congress shall pass no law...abridge the freedom of speech, the right of the people to redress for grievances.
> U.S. Const. Amend. 1.

The pertinent portion of the Fifth Amendment provides:

> No...person shall be deprived of life, liberty or property without due process of law; nor shall any private property be taken for public use, without ... just compensation.
> U.S. Const. Amend. V.

The pertinent portion of the Seventh Amendment provides:

> ...where the matter in controversy shall exceed twenty dollars, the right to a

jury trial shall be preserved.
U.S. Const. Amend. VII.

The pertinent portion of the Fourteenth Amendment provides:

> No state shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law.

U.S. Const. Amend.XIV

28 U.S.C. 1443: Any of the following commenced in a state court may be removed by defendant to U.S. District Court.

> (1)Against any person who is denied or cannot enforce in the courts of such a state law providing for equal civil rights of citizens of the United States.
>
> (2) For any act under the color of authority deprived from any law providing the full and equal benefits of the law.

28 U.S.C. 1981:

> All persons in the United States shall have right in every state...to sue... to the full and equal benefits of the laws.

28 U.S.C. 1982:

> All persons in the United States shall have right in every state...to inherit purchase lease and convey real and personal property.

28 U.S.C. 1983:

Every person who under the color of any statute, ordinance, regulation, custom, or usuage in any state...subject any citizen or other person within its juris diction thereto the deprivation of the priveleges secured by the constitution and its laws shall be liable in equity or other proper proceeding.

28 U.S.C. 2403:

In any action where the constitution-ality of a state affecting the public interest is drawn into question.

TCA 29-27-117 Partition in Kind:

If exact partition cannot be made without material injury to the parties or some one of them, the commissioners may make the partitions as nearly equal as they can, and charge the larger shares with the sums necessary to equalize all shares.

STATEMENT OF THE CASE

The United States Court of Appeals for the Eleventh Circuit denies appeal to the United States District Court for the Southern District of Florida abuse of discretion in dismissal of Complaint and Jury Trial Demand for the violation of constitutional right to travel freely in the United States without intentional arbitrary discrimination of equal protection of deprivation of priveleges secured by the Constitution and its laws

under the Fourteenth Amendment and liability provided in 28 U.S.C. 1983 App. A.p.1,2).

The Complaint and Jury Trial Demand for relief in damages was filed in the United States District Court, Nonconsent to Magistrate No.98-8991 Civ-Ryskamp on June 12,1998, and amended to add issues and parties on September 29, 1998.

Case No. 98-08391 was reassigned to No. 98-0839 CIV-Hurley and Magistrate Judge Lynch processed the case on November 8, 1998.

The District Court dismissed Complaint and Jury Trial Demand, Nonconsent to Magistrate jurisdiction on October 12, 1999(App.B) and the Magistrate Judge denied Petition for Rehearing dismissal and Demand for oral Argument on October 19, 1999 (App.B.p.6).

The Notice of Appeal to the Court of Appeals Eleventh Circuit was filed November1, 1999 , Court of Appeals No.99-14349 GG(App.A.)

Petition for Hearing denied on March 13, 2001(App. A p.1).(Rehearing denied April 24).

The Court of Appeals Eleventh Circuit tries to deny Petitioner Supreme Court reivew in misrepresentation by misconcuring the Petition for rehearing in denial on April 24, 2001, but Petitioner has included the Petition for Rehearing Denial of Petition for Renearing En Banc submitted onMarch 22,2001 (App.A.p.4).This Petition for Writ of Mandamus it timely and properly before this suppreme Court within ninety(90) days thereof.

In February, 1998, Petitioner learned that Dalton Mounger, Attorney for Frank Hulen Estate, Dora Lee Hulen, Wilma Lesnansky and Glen Hulen had filed motion in Third Complaint in conspiracy to take all of Petitioner's property in Tennessee on January 30, 1998, without notification to her, and without Constitutional right of Jury Trial provided in Seventh, without due process any just compensation in the Fifth,without equal protection under Partition in Kind 29-27-117 TCA and due process Four

eenth, and right of redress under the First Amendments to the Constitution of the United States.

On February 10, 1998 this hearing was held with participating parties Dalton Mounger The Honorable Jim Hamilton, Chancery and Circuit State Judge, Gerald Wilson, Circuit Court Clerk, and Geneva Frisbee, Clerk and Master.

Petitioner was not notified of hearing and the hearing was held without her presence. Judge Hamilton dismissed Counter-claim No.7951 -96, Ordered Judgment No.7951-96, dismissed CC:452-98 on February 10, 1998, and ordered Rena Hulen Estate sold at public auction on March 14, 1998.

Appellant and her husband were obligated to travel by automobile from their residence in Florida to try to prevent Petitioner's rights, investments, interests from being sold at public auction at low price and loss on March 14, 1998.

When Petitioner went to Chancery Court to get necessary papers to stop sale,Gerald Wilson Circuit Court Clerk,started pushing and obstructing her in office,and "shouted I am going to take her "white Cadillac". He had taken invalid expired lein off her individual property, and put it on her automobile without due process of notification to her to charges for invalid survey conducted by Buford & Sons without her knowledge or permission to enter on her land.

Clerk ordered Petitioner, Sheriff to take Petitioner's car if she did not pay $695.00.

Petitioner had to pay so disabled husband on crutches would not be put on the street. The police took her in car to bank to get cash Circuit Court Clerk demanded.

Ms. Virginia Frisbee C&M stated"Mrs. Polyak let use sell your property."

Petitioner had to pay six thousand($6000.00 in bonds to keep property from being sold at Public auction on March 14, 1998.Petitioner and husband returned to residence FL.

The Complaint and Jury Trial Demand Non consent to Magistrate jurisdiction No.98-08391 CIV-HURLEY included parties Ed Martin Lawrence County Executive;Gerald Wilson, Circuit Court Clerk;Virginia Frisbee C&M; Buford Evans & Sons; William Boston, Boston, Bates & Holt, Frank Hulen Estate; Dora Lee Hulen; Wilma Lesnansky Dalton Mounger.

Petitioner contends that Lawrence County, and state of Tennessee is liable for State parties actions, and U.S.Government.

The Complaint was amended to add parties and issues necessary for suit Janet Reno, Attorney General, and the Honorable Don Sunquist Governor of Tennessee, and Hon. John Knox Walkup Attorney General of Tennessee, Hon. Jim Hamilton Chancery and Circuit Court State Judge;Petitioner believes that Leonard Green Clerk Court of Appeals Sixth Circuit is responsible for denial of appeal in Sixth Circuit Court of Appeals and Janice Yates, Chief Deputy Clerk. Glenn Hulen conspired to bring about auction,

so he could buy property at a cheap price. He asked Petitioner to buy her individual property and was holding these fraudlent leins upon her property, and admited facts.

Petitioner had tried to find lawyers, but they would not represent her because of local biases. The Federally Funded Title III program was established to help persons over sixth (60) years of age, but they refused to help Petitioner.She added Bill Haley Executive Director Legal Services after he refused to help her second time.She qualifies for TitleIII

Lawyers state that Legal Services under Title III obligated. Clerk stated that if Petitioner lived in Tennessee they would help her with get her property and discrimination.

Petitioner is Administratrix of property appointed by Lawrence County Court Judge on on August 30, 1976.She has all of the authority of Administrax, but Tennesse denies law.

ARGUMENT

1. THE SUPREME COURT SHOULD ISSUE EXTRAORDINARY WRIT OF MANDAMUS TO REVIEW THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT'S DENIAL OF APPEAL ABSTRAINING FROM FEDERAL JURISDICTION OF CONSTITUTIONAL RIGHTS AND PRIVELEGES IN THE DISMISSAL ON PERSONAL JURISDICTION BY THE UNITED STATES DISTRICT COURT OF CASE

The Supreme court should issue extraordinary Writ of Mandamus authorized by 28 U.S.C. 1651(a) to review the United States Court of Appeals Eleventh Circuit's denial of Appeal as a Right Rule 3, FRAP in abstaining from federal jurisdiction of the rights and priveleges in the dismissal on personal jurisdiction by the United States District Court No. 98-08391 CIV-HURLEY(99-143949).

This Complaint and Jury Trial for relief in damages for the intentional arbitrary discrimination in the sale of rights investments, and interests without constitutional right of a jury trial for relief in damages as provided in the Seventh, due process and any just compensation in Fifth,due process and equal protection under Partition

in Kind 29-27-117 TCA, and right of redress provided in the First Amendments to the constitution.

Petitioner was in residence in Florida, when she learned that conspiracy to take all of her property in Tennessee on motion without due process to notify her was scheduled by Third lawyer, and hearing held without her presence by Dalton Mounger, and the Honorable Jim Hamilton,Chancery and Circuit State Judge ordered property sold at public auction without a jury trial.

> Notice by mail or other means as certain to insure actual notice is a minum rconstitutional rprecondition o a proceeding which will adversly affect the liberty, or property interests of any party whether unlettered or well versed. New York v New York N.H.& CO. 344 US at 297, 73 S Ct at 301.

Petitioner and husband traveled by car to keep rights interests properties being sold cheaply at public auction.Gerald Wilson Circuit Court Clerk took old invalid lein by Buford Evans & Sons off her individual property without notification put on her

automobile.When Petitioner went to get necessary papers in Chancery Court to stop sale,the Clerk obstructed her pushing and shouting"I am going to take her white cadillac."She was pushed to Sheriff's office to pay Buford Evans & Sons $695.00 for invalid illegal survey conducted for sale at public auction.

Petitioner was coerced and forced to pay to keep Sheriff from putting disabled husband on crutches on street. The Sheriff took Petitioner in county car to bank to get money.

> The right to travel embraces three components: the right to enter and leave another state;the right to be treated as a welcome visitor while temporarily present in another state;...and the right to be treated like citizens of that state. Rita L. Saenz Cal.Dir.of Soc Services et al., Pet.Brinda Doe etc. No. 98-97 1/13/99(S Ct Syllabus).

The denial of jury trial violates the Fifth Seventh and Fourteenth Amendments and any citizen subjected under usuage of state to the deprivation of of priveleges and laws secured by the Constitution is liable under 28 U.S.C. 1983.

A denial of jury trial violates the

2. THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA HAS PERSONAL JURISDICTION OVER ACTIONS IN MATTERS GOVERNED BY THE CONSTITUTION AND ACTS OF CONGRESS

The United States District Court Southern District of Florida has personal jurisdiction in federal courts in matters governed by the constitution and acts of Congress.This Complaint and Jury Trial Demand and Amended Complaint was brought under the First Amendment right to petition for redress, right for due process and just compensation under Fifth, Constitutional right of a jury trial for relief in damages under Seventh, denial of equal protection under TCA 29-27-117 under due process clause of the Fourteenth Amendment and Acts of congress governing Civil Rights acts of Congress 28 U.S.C. 1983.

The First Amendment right to petition for redress of grievances when adequate relief cannot be obtained in any other Court.

The various freedom and rights pro-

tected by the First Amendment have been held applicable to the states through the due process clause of the Fourteenth Amendment. Black's law, Copyright 1991 West Publishing Company.

The filing requirements of the District Court Suothern District of Florida states:

> In suits based on diversity of citizenship(where plaintiff and defendants reside in different states) the suit may be brought in the district court where the plaintiff resides 28 U.S.C. 1932.

This action was brought under Articel III Sec. 2, between citizens of another state; citizens of different states...and matters governed by the Constitution and Acts of Congress.

The case deciding federal jurisdiction was Erie Railroad v Tompkins, 304 U.S. 64 58 S Ct 817 82 L Ed 1118.

> Erie Railroad v Tompkin requires federal court to give som. remedies in diversity case.Erie Railroad v Tompkin,Moores K.F. 8716.5M 663.

> The district court has personal jurisdiction in constitutionally sufficient relationship between defendant and the forum Ommni v Rudolph Wolf & Co.108 S Ct 404 409(1987).

Petitioner left residence in Florida in

automobile on March 11, 1998 , and returned to residence in Florida on March 16, 1998.

> In detrmining whether doctrine should be applied,court should consider relative ease of access to sources of proof availability of compulsory process for attendance of unwilling witness, and all other practical problems that make trial easy expiditious and inexpensive. Black's law (Supra).

But Petitioner finds Florida Statute provided basis for notice and fair play under due process of Fourteenth Amendment.

> Whether sufficient contacts exists bet ween the Defendants and the forum state to establish the traditional notice, fair play and substantiates under due process clause of the fourteenth amend to the United States Counstitution. Sculputchear v Century Arts Ltd. 94 Fed. 3d 623(11th Cir 1966).

Petitioner contends that Green and Yates did not answer within required time and they should be defaulted for full judgment of damages. They should not be granted official immunity.They took a vow to uphold Constitution

> qualified immunity is available as long as the defendant government official actions could reasonably have been thou ght consistent with rights (he(is)alleged to have violated. Anderson v Craig thon, 107 S Ct 3034 3038(1987and so for

as Constitutional rights of which a reasonable person would have known Harlow vFitsgerald, 102 S Ct 2727(1982).The purpose of these requirements is to insure the official is or should be aware of the rights he is violating Anderson(Supara).

The District Court has jurisdiction where diversity of citizenship exists of actions under Article III, Sec.2. action.

The federal district courts have jurisdiction where diversity of citizenhip exists over actions involving the possession of land, and the action for partition of real property.Beebe v Lousiville N.O. T.R. Co. (1989) 39f 481

The jurisdiction of the didtrict court arising from diverse citizenship extend to the the entire suit, and to every question state of federal in its determination Witichita Light co. v Public utilities Co. Kans 1922 43 S Ct 51 26 U.S. 67 L Ed 124.

The Court ruled that a person may accuse the government of violating the constitution'a guarantee of equal protection of the laws, even if the person is not a racial minority or part of a specifically protected group. In an unsigned opinion the justices ruled unamously for a woman who sued the Village of Willobrook S Ct.Feb 23,2000.

...equal protection clause of the Fourteenth Amen. is to secure every person within the State...against intentional arbitrary discrimination...whether terms of a Statute or Agents.Village of Willow brook et al., vGrace Olech,No.98-1288 SCt

3. THE EXCEPTIONAL CIRCUMSTANCES IN WHICH THE RIGHTS INVESTMENTS AND INTERESTS IN PROPERY ARE TAKEN WITHOUT CONSTITUTIONAL RIGHT OF A JURY TRIAL ARE UNCONSTITUTIONAL AND WARRANT THE EXERCISE OF THIS COURTS DISCRETIONARY POWERS

The exceptional circumstances in which these properties are seized under 35-5-101 et seq.TCA and sold without constitutional right of a jury trial in this state conflicts with the laws of other states and this statute is unconstitutional and in violation of the Fifth Seventh and Fourteenth Amendments.

This law allows for properties to be seized and sold in violation of Statute Partition in Kind 29-27-117 TCA which provides for Fifth and Fourteenth amendment protcetion of due process and equal treatment.

> If exact partition cannot be made without material injury to the parties or some one of them, the commissioners may make the partitions as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares. TCA.
>
> ...appellant can consider the fact that insufficient advertisement in connectio with other facts of case determning why land did not bring adequate price. Napier v Stone, 21 Tenn. App. 626 114

S.W. 2d 57(1937)

Sale in which mortagor had paid $450.00 was set aside where sale was unadvertized and consideration was only $117(supra

This sale allowed for strict foreclosure at a public auction advertised that it would not be held open for bid and closed on that day denying right of redemption.

It is assumed rule in Tennessee is that strict foreclosure is valid only if fully supported by every specified condition where there is no provision for personal service and no redemption permitted. Highbee v Chadwick, 120 Tenn. F 873(1915)

Fourteenth Amendment protection of property does not only safeguard rights of undisputed ownership, but also extends protection to any significant statutory entitlements. Feuntus v Shevin, (1972) 401 U.S. 92 S Ct 1983 32 L Ed 566.

4. THE SUPREME COURT'S GRANTING OF WRIT OF MANDAMUS TO REVIEW THE COURT OF APPEALS DENIAL OF DISMISSAL OF COMPLAINT AND JURY TRIAL DEMAND, NON-CONSENT TO MAGISTRATE JURISDICTION WILL AID THE APPELLATE JURISDICTION

Petitioner contends that the Supreme Court's granting of writ of mandamus to review the denial of appeal as a right by the Court of appeals of dismissals by the District Courts will be an aid to appellate

and the United States Legislature 's new legislation to protect the constitutional rights of injured parties deprived of rights and property rights secured by the constitution to expide access to federal courts in ill No.2732 introduced on ;ne 29 1999, but still has to be approved by the Senate.

> To expidite access to the Federal Courts for parties whose rights and priveleges secured by the constitution have been deprived by final actions of federal agencies, and other government officials or entities acting under color of state law; prevent Federal Courts from abstain ing from exercising jurisdiction...(any claim under 42 U.S.C 1983).

This bill may help persons whose pro-

properties and sold without constitutional right of jury trial at public auction.

> ...it appears that local governments are trying to change federal laws, the most significant of most small towns politics is the frequency whth which the legal procedural requirements are overlooked and ignored, so as take account of unique conditions,such as personalized government even at the local level can be intimate and effec-tive...Wood,Suburbia 278-80(1958.

5. ADEQUATE RELIEF FOR THE DENIAL OF CONSTI - TUTIONAL RIGHT OF A JURY TRIAL FOR RIGHTS INVESTMENTS , AND INTERESTS CANNOT BE OBTAINED IN ANY OTHER FORM OR ANY COURT

The Petitioner cannot obtain adequate relief for the denial of constitutional right of a jury trial for rights investments and interests in any other form or any other Court.

The Court of Appeals Eleventh Circuit denies appeal as a right Rule 3, FRAP to Complaint and Jury Trial Demand Nonconsent to Magistrate Judge 28 U.S.C. 636(c) to dismissal by the District Court of constitutionsl right of a jury trial for relief in damages .

Some of the Defendants allege that the Sixth Circuit has jurisdiction and venue of action taking place in Tennessee.

But the Court of ppeals of the Sixth Circuit has never granted constitutional right of a jury trial for relief in damages

The upreme Court of Tennessee denies appeal to the abuse of discretion in the lower courts in the denial of constitutional right of a jury trial for relief in damages for the sale of rights investments

at public auction and irreparable damage in the loss of retirement home.

The United States istrict Court Middle District of Tennessee dismissed all Complaint and Demand for constitutional right of a jury trial for relief in damages, and Amended Complaint , and the court of Appeals Sixth Circuit-denies Right of Appeal Rule 3 FRAP.

CONCLUSION

Petitioner prays that this Court issue Writ of Mandamus to review the Court of Appeals Eleventh Circuit denial of appeal to the dismissal of the United States District Court of constitutional right of jury trial for relief in damages of civil rights as set forth in complaint an remand for constitutional right of a jury trial before an unbiased tribunal, and any other such relief as this Court deems fair and just.

On 20th day of July, 2001.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(734) 676-3364

I certify that this is true to the best of my belief and knowledge.

EARLENE POLYAK

STATE OF MICHIGAN
COUNTY OF WAYNE

NOTARY PUBLIC

My Com'n expires:

CERTIFICATE OF SERVICE

I certify that a true copy of this Petition for Writ of Mandamus has been mailed to all of the parties on the list of parties served, or their representatives on the 20th day of July, 2001.

_____

Earlene Polyak

LIST OF PARTIES NO. 98-8391 CIV-HURLEY

Ed Martin, Lawrence County Executive
240 West Gaines Street
Lawrenceburg, Tennessee 38464

Gerald Wilson, Circuit Court Clerk
240 West Gaines Street
Lawrenceburg, Tennessee 38464

Virginia Frisbee,Clerk and Master
240 West Gaines Street
Lawrenceburg, Tennessee 38464

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LIST AMENDED TO ADD PARTIES AND ISSUES

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APPENDIX A

In the United States Court of Appeals for the Eleventh Circuit No. 99-14349 GG.

Earlene Polyak v Ed Martin,Laurence County Executive, Lawrence County, Tennessee, Gerald Wilson,Circuit Court Clerk,Geneva Frisbee, Clerk & Master et al.,

Filed:

Petition for Hearing denied:March 13, 2001.

Petition for Rehearing:Misrepresented as motion for reconsideration denied on April 24 2001.

Before: TJOFLAT AND EDMONDSON Circuit Judges;

Petition for Hearing: denied March 13 2001.

Before:TJOFLAT, EDMONDSON and DUBINA Circuit Judges .

NOTICE OF OPPORTUNITY TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY MAGISTRATE JUDGE AND APPEAL OPTION

In accordance with the provisions of 28 U.S.C. 636(c) and Fed. R. Civ.P.37, you are hereby notified that the United States magistrate judge of this district court, in addition to their other duties, may upon consent of all parties conduct any and all proceedings in this case, including a jury trial or non-jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent or not to consent, to the referral of your case to a United States magistrate judge for disposition is entir ley voluntary and shoul be indicated by counsel endorsing the attached consent form for the plaintiff(s) and defendant(s If the form is executed by all counsel for the parties, it should be communicated solely to the clerk of the district court. ONLY if all partiesto the case consentto the referance to a magistrate judgewill either the judge of magistrate judge to whom the case has been assigned be informed of your decision

.....

In accordance with 28 u.S.C. 636(c)(3) and Fed R. Civ. P. 73(c) an appeal from a judgment entered by a magistrate judge may be taken directly to the United States Court of Appeals for this judicial circuitin the same amnner as an appeal from the judgment of a district court.....

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.99-14349-GG

EARLENE POLYAK Plaintiff-Appellant

FILED APR 24 2001

Versus

ED MARTIN,
LAWRENCE COUNTY EXECUTIVE,
LAWRENCE COUNTY, TENNESSEE,
CIRCUIT COURT CLERK,
GENEVA FRISBEE,et al Defendant-Appellee

On Appeal from the United States District Court for the Southern District of Florida

---

BEFORE: TJOFLAT AND EDMONDSON Circuit Judges.

ORDER:

Appellant's Petition for Rehearing denial of Petition for Hearing En Banc construed as a motion for reconsideration of denial of petition for Rehearing En Banc is denied.

s/ no signature

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-14349 GG

EARLENE POLYAK Plaintiff-Appellant

FILED MAR 13 2001

Versus

ED MARTIN
LAWRENCE COUNTY EXECUTIVE,
LAWRENCE COUNTY, TENNESSEE,
CIRCUIT COURT CLERK,
GENEVA FRISBEE et al., Defendant-Appellees

On Petition for Hearing en Banc from the United States District Court for the Southern District of Florida

---

BEFOREE: TJOFLAT,EDMONDSON and DUBINA Circuit Judges.

No Judge in the regular service on the Court having requested that the Court be polled on hearing en banc. FRAP, Eleventh Circuit,the Petition for hearing is Denied.

s/RE Edmondson
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

v

FILED MAR 13 2001

ED MARTIN LAWRENCE EXECUTIVE
LAWRENCE COUNTY, TENNESSEE,
CIRCUIT COURT CLERK GENEVA FRISBEE
CLERK AND MASTER

PETITION FOR REHEARING DENIAL OF
PETITION FOR HEARING EN BANC

Appellant petitions for rehearing of denial of Petition for Hearing en Banc on arch 13, 2001. This petition for rehearing is timely within fourteen (14) days by Airborne Express, next day delivery on March 22, 2001

The ccurt of appeals Eleventh Circuit overlooks th equal protection of a jury trial clause where the pro se litigant has been denied Constitutional right of a jury trial for relief in damages when her rights, investments and interests have been held for over fifteen (15) years in the state of Tennessee, as provided in the Seventh Amend-

ment , denied right of redress forvided in the first Amendment. denied due process and and any just compensation provided in the Fifth Amendment, denied due process and equal protection to the deprivation of priveleges in Partition in Kind 29-27-117 TCA, and subjected to the deprivation of priveleges Fourteenth Amendment, and subjected to the deprivation priveleges secured by the Constitution and its laws pursuant to 42 U.S.C. 1981,1982, 1983, and 42 U.S.C. 1443 and other civil rights acts and laws, and conflict with Supreme Court rulings, and fourteenth Amendment to the Constitution.

> Our cases have recognized successful equal protection claimsbrought by a "class of one" where the plaintiff has been treated differently from others similarly situated and there is no rational basis for the difference in treatment ...in so doing we have explai ed that the purpose for the equal protection clause in the Fourteenth Amendment is to secure every one within the state's jurisdiction against intentiona arbritrary discrimination. Village of Willowbrook et al. v Grace Olechi,No. 98-1288(Supreme Court February 13,2000)
>
> ...ruled that a person may accuse the government of violating the Constituti

guarantee of equal protection of laws, even if the oerson is not of racil minor ity or part of a specially protected group in an unsigned opinion the Justices ruled unamously for a women who sued the Village of willowbrook.Village ofWillow brook et al v Grace Olech(Supra).

It appears that this intentional arbitrary discrimination is present in Southern District of florida.

In suits based on diverstiy of citizenship(where the plaintiff and defendants reside in different states) the suit may be brought in the district court where the plaintiff resides 28 U.S.C. 1932.

This action was brought under Article III Sec. 2,between citizens of a state and citizens of different states:

This case involves matters governed by the Constitution and Acts of congress.The case deciding federal jurisdiction was Erie Railroad v Tompkin 304 U.S. 64 58 S Ct 817 82 L Ed 1118.

Erie Railroad v Tompkin requires federal court to give some equitable relief Moores K.F. 8716.5M 663.

The District Court has personal jurisdiction in constitutionally sufficient relationship between Defendant and forum Omnni v Rudolph Wolf & Co. 108 S Ct 404 409(1987).

The Court of Appeals Eleventh Circuit

overlooks the intentional arbitrary discrimination against pro se litigants in violation of constitutional rights and interests .

> Appellants do not contend that state officials are immune against suits brought to restrain unconstitutional acts undertaken in their judicial capactities. The law clearly states the right of an interested party to force state officials to act in accordance with the constitution. Jordon v Gilligan 500 F 2d 701 105(6th Cir).

In conclusion Appellant prays that this United States Court of Appeals set aside United States district Court, Southern District of Florida dismissal by Magistrate Judge , and remand case back for the constitutional right of a jury trial demand, and amended Complaint and Jury Trial Demand,before an unbiased tribunal, and any other such relief as this Court deems fair and just.

I certify that a true copy of this pleading has been mailed to all of the parties on the attached list, or their representatives on the 22nd day of March, 2001.

Respectfully submitted,

Earlene Polyak
145 Lakesied Drive
Jupiter, Florida 33458
(561) 743-9544

3179 Middlefield Drive
Trenton, Michigan 48183
(734)676-3364

APPENDIX B

In the United States District Court, Southern District of Florida No.98-8931 CIV-HURLEY.

Earlene Polyak v Ed Martin, Laurence County Executive, lawrence county, Tennessee, Gerald Wilson,Circuit Court Clerk, Geneva Frisbee, Clerk and Master

Filed: June 9, 1998.

Amended: September 29, 1998.

Parties Included: Honorable anet Reno, Attorney General Of U.S.,John Wilkup,Attorney General of Tennessee, Don Sunquist,Governor of Tennessee, Jim Hamilton Circuit and Chancery State Judge,Leonard Green, Clerk U.S. Court of Appeals Sixth Circuit,Janice Yates, Chief Deputy Clerk U.S.Court of appeals Sixth Circuit,Glenn Hule, Bill Haley, director Legal Services of Tennessee,Bufore Evan &Sons Frank Julen Estate, Dora Lee Hulen, Dalton Mounger, William Boston, Boston Bates & Holt, and Robert Boston,attorney at Law.

Dismissed: October 12,1999.

Denied: Plaintiff's Petition for Rehearing and Demand for Oral Argument on October 19, 1998

Filed : Notice of Appeal to the Court of Appeals Eleventh Circuit on November 1, 1998.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-8391-CIV-HURLEY/LYNCH

EARLENE POLYAK

Plaintiff

FILED OCT 12 1999

V

ED MARTIN,et al,,

Defendants

ORDER DISMISSING COMPLAINT FOR LACK OF PERSONAL JURISDICTION

This matter is before the court upon defendants' Green, Yates, Reno, Martin, Frisbee, Wilson, G.Hulen, Lesnansky, F. Hulen Mounger, Haley, LSOSC, Sunquist, and Walkup, nine motions to dismiss complaint. All of the defendants base the defendants base their motions on lack of personal jurisidiction.The court has carefully reviewed the pleadings, file and merits of said motions and, after due consideration, it is hereby

ORDERED AND ADJUDICATED

(1) That the defendants' motions to dismiss (DE #49,50,51,52, 53,54,63,65, 83) are GRANTED. Plaintiff's complaint is dismissed. The court has determined that it does not have

personal jurisdiction over the defendants in this case, and the Southern District of Florida is not the proper venue for this case of action.

(2) The Clerk of the Court shall enter the case closed, and

(3) any pending motions (DE #27,41,56, 74, 84, 86) are denied as moot.

DONE AND SIGNED in Chambers at West Palm Beach, Florida, this 11th day of October 1999.

s/Daniel T.K. Hurley
United States District Judge

Copies furnished to:

See attached list

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 98-8391-RYSKAMP

FILED JUN 12 1998

EARLENE POLYAK

Plaintiff

v

ORDER OF REFEREANCE

ED MARTIN, et al,

Defendants /

Pursuant to 28 U.S.C. 636 and the Magistrate Rules of Local Rules of the Southern District of Florida, the above caltioned case is hereby referred to the United States Magistrate Judge Vituanc for all pretrial matters to take all necessary and proper action required by law and/or to submit a Report and Recommendation to this Court.

DONE AND ORDERED in Chamberw West Palm Beach, Florida on this 12 day of June ,1998.

s/ Kenneth L. Ryskamp
United States District Judge.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EARLENE POLYAK

Plaintiff

v

ED MARTIN et al.,

Defendants

FILED NOV 18 1998

Case No. 98-8391 CIV-HURLEY

NOTICE OF NON -CONSENT TO MAGISTRATE

Plaintiff gives notice of non-consent to Magistrate jurisdiction pursuant to 28 U.S.C. 636(c) and Fed.R.Civ P.73"You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate Judge is entirely voluntary....this notice of non-consent is timely within ten (10) days of June 9, 1998, on June 15, 1998.

I certify that a true copy of this non-consent will be served on the parties on the attached list of of service with complaint and summons on the 15th day of June , 1998.

Respectfully submitted,

Earlene Polyak
145 Lakeside Drive
Jupiter, florida 33458
(561) 743-9544

-
3179 Middlefield Drive
Trenton, Michigan 48183
(734) 676-3364

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EARLENE POLYAK

FILED OCT 2 1998

Plaintiff

v

Case No. 98-8391-CIV-HURLEY

ED MARTIN,LAWRENCE COUNTY EXECUTIVE et al.,

Defendants

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE SCHEDULED REPORT AFTER LAST RESPONDEN

The motion for leave to file scheduling report after the last responding Defendant is hereby granted to the Plaintiff, Earlene Polyak, 145 Lakeside Drive, Jupiter, Florida 33458.

It is so ordered on the 21st day of October, 1998.

s/ Daniel T. Hurley
U.S. District Judge